

REMARKS

In the Final Office Action¹, the Examiner:

1. rejected claims 1 and 17 under 35 U.S.C. § 112, second paragraph;
2. rejected claims 1, 4, 6, 11, 12, 17, 20, 27, and 28 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,646,676 to Dewkett et al. ("*Dewkett*") in view of U.S. Patent No. 4,616,263 to Eichelberger ("*Eichelberger*");
3. rejected claims 2, 18, and 26 under 35 U.S.C. § 103(a) as being unpatentable over *Dewkett*, *Eichelberger*, and further in view of U.S. Patent No. 6,286,142 to Ehreth ("*Ehreth*");
4. rejected claims 3, 5, 10, 13, 15, 19, 23, and 24 under 35 U.S.C. § 103(a) as being unpatentable over *Dewkett*, *Eichelberger*, and further in view of U.S. Patent No. 6,139,197 to Banks ("*Banks*");
5. rejected claims 7-9, 21, and 22 under 35 U.S.C. § 103(a) as being unpatentable over *Dewkett*, *Eichelberger*, and further in view of U.S. Patent No. 6,151,325 to Hluchyj ("*Hluchyj*");
6. rejected claims 14 and 25 under 35 U.S.C. § 103(a) as being unpatentable over *Dewkett*, *Eichelberger*, *Banks*, and further in view of U.S. Patent No. 6,014,706 to Cannon et al. ("*Cannon*"); and

¹ The Final Office Action contains a number of statements reflecting characterizations of the related art and the claims. Regardless of whether any such statement is identified herein, Applicant declines to automatically subscribe to any statement or characterization in the Final Office Action.

7. rejected claim 16 under 35 U.S.C. § 103(a) as being unpatentable over *Dewkett, Eichelberger, Banks*, and further in view of U.S. Patent No. 6,052,715 to Fukui et al. ("*Fukui*").

Applicant proposes to amend claims 1 and 17, and claims 1-28 remain pending.

I. Rejection of claims 1 and 17 under 35 U.S.C. §112, second paragraph

Regarding the rejection of claims 1 and 17 under 35 U.S.C. § 112, second paragraph, the Examiner states "[i]t is unclear as to 'determining a fault condition when at least one of the video server....does not respond...' and where the color coded fault indication in being display[ed], i.e., the server display device or the client display device" (Final Office Action at page 2). In response, although Applicant does not concede that the claims are indefinite, Applicant has amended independent claim 1 to recite "displaying a color coded fault indication on a display of the system controller." Independent claim 17 has been similarly amended.

Applicant submits that claims 1 and 17 meet the requirements of 35 U.S.C. § 112, second paragraph, and requests that the Examiner withdraw the rejection.

II. Rejection of claims 1, 4, 6, 11, 12, 17, 20, 27, and 28 under 35 U.S.C. § 103(a) as being unpatentable over *Dewkett* in view of *Eichelberger*

Applicant respectfully traverses the rejection of claims 1, 4, 6, 11, 12, 17, 20, 27, and 28 under 35 U.S.C. § 103(a). A *prima facie* case of obviousness has not been established with respect to these claims.

The key to supporting any rejection under 35 U.S.C. § 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. See

M.P.E.P. § 2142, 8th Ed., Rev. 6 (Sept. 2007). Such an analysis should be made explicit and cannot be premised upon mere conclusory statements. See id. “A conclusion of obviousness requires that the reference(s) relied upon be enabling in that it put the public in possession of the claimed invention.” M.P.E.P. § 2145. Furthermore, “[t]he mere fact that references can be combined or modified does not render the resultant combination obvious unless the results would have been predictable to one of ordinary skill in the art” at the time the invention was made. M.P.E.P. § 2143.01(III), internal citation omitted. Moreover, “[i]n determining the differences between the prior art and the claims, the question under 35 U.S.C. § 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious.” M.P.E.P. § 2141.02(I), internal citations omitted (emphasis in original). In this application, a *prima facie* case of obviousness has not been established because the Examiner has not clearly articulated a reason why one of ordinary skill would find the claimed combination obvious in view of the cited references.

Amended independent claim 1 recites a system comprising, *inter alia*:

...
a system controller configured to monitor the video server and client devices by sending fixed interval echo messages to the video server and client devices, determining a fault condition when at least one of the video server and client devices does not respond to the echo message, and displaying a color coded fault indication on a display of the system controller ...

Dewkett discloses a system that “eliminates bandwidth limitations caused by transmitting movie data (and similar text/graphic data) through system memory buses and associated buses” (col. 4, lines 13-15). In *Dewkett*, a client device “maintains a continuous transmission of the movie for smooth TV viewing of the movie data by

issuing a series of next block commands to the MM controller (transparent to the human user of the STB)[.] . . . buffers each received data block, and performs any decoding, cryptography, metering, and control function as it outputs the STB buffered data to the attached TV set for viewing and sound" (col. 5, line 65 - col. 6, line 5).

The Examiner states that *Dewkett* "discloses where the Host Network System monitors the plurality of the STBs request, and inserts path information into a prefix that enable each network switch to interpret the prefix and select the next leg in the path needed to transmit the data block on its way to the required STB" (Final Office Action at page 4).

Even assuming this is correct, which Applicant does not concede, *Dewkett* fails to teach or suggest the claimed "sending fixed interval echo messages" in combination with "determining a fault condition" and "displaying a color coded fault indication," as recited in claim 1. Therefore, *Dewkett* does not teach or suggest "a system controller configured to monitor the video server and client devices by sending fixed interval echo messages to the video server and client devices, determining a fault condition when at least one of the video server and client devices does not respond to the echo message, and displaying a color coded fault indication on a display of the system controller," as recited in claim 1.

Eichelberger does not cure the deficiencies of *Dewkett*. *Eichelberger* discloses a video control unit for "determining the storage location of video segments and for scheduling broadcast times for various segments" (col. 1, lines 36-38). However, *Eichelberger* does not teach or suggest "a system controller configured to monitor the video server and client devices by sending fixed interval echo messages to the video

server and client devices, determining a fault condition when at least one of the video server and client devices does not respond to the echo message, and displaying a color coded fault indication on a display of the system controller,” as recited in claim 1.

As set forth above, the combination of *Dewkett* and *Eichelberger* does not teach or suggest all elements of claim 1. Moreover, there is no teaching or suggestion that would lead one of ordinary skill in the art to modify the references to achieve the combination of claim 1. Thus, as outlined above, the Office Action has neither properly determined the scope and content of the cited references nor properly ascertained the differences between the cited references and claim 1. Therefore, no reason has been clearly articulated as to why the claim would have been obvious to one of ordinary skill in view of the cited references and a *prima facie* case of obviousness has not been established with respect to claim 1.

Thus, claim 1 is allowable for at least these reasons, and claims 4, 6, 11, 12, and 27 are also allowable at least due to their dependence from claim 1.

Independent claim 17, while of different scope, recites features similar to those of claim 1 and is thus allowable over *Dewkett* and *Eichelberger* for reasons similar to those discussed above in regard to claim 1. Moreover, claims 20 and 28 are also allowable at least due to their dependence from claim 17.

III. Rejection of claims 2, 18, and 26 under 35 U.S.C. § 103(a) as being unpatentable over *Dewkett*, *Eichelberger*, and *Ehreth*

Regarding the rejection of claims 2, 18, and 26, which depend from claims 1 and 17, the Examiner relies on *Ehreth* for allegedly disclosing “a method for communicating video signals to a plurality of television sets 100” (Final Office Action at page 8). Even

assuming this assertion is correct, which Applicant does not concede, *Ehreth* does not compensate for the deficiencies of *Dewkett* and *Eichelberger* with respect to the independent claims.

Therefore, a *prima facie* case of obviousness has not been established for claims 2, 18, and 26 and the Examiner should withdraw the rejection of the claims under 35 U.S.C. § 103(a).

IV. Rejection of claims 3, 5, 10, 13, 15, 19, 23, and 24 under 35 U.S.C. § 103(a) as being unpatentable over *Dewkett*, *Eichelberger*, and *Banks*

Regarding the rejection of claims 3, 5, 10, 13, 15, 19, 23, and 24, which depend from claims 1 and 17, the Examiner relies on *Banks* for allegedly disclosing "a Video Server 102 with a video encoder 106 that streams real-time video on the fly to Client 110" (Final Office Action at page 9). Even assuming this assertion is correct, which Applicant does not concede, *Banks* does not compensate for the deficiencies of *Dewkett* and *Eichelberger* with respect to the independent claims.

Therefore, a *prima facie* case of obviousness has not been established for claims 3, 5, 10, 13, 15, 19, 23, and 24 and the Examiner should withdraw the rejection of the claims under 35 U.S.C. § 103(a).

V. Rejection of claims 7-9, 21, and 22 under 35 U.S.C. § 103(a) as being unpatentable over *Dewkett*, *Eichelberger*, and *Hluchyj*

Regarding the rejection of claims 7-9, 21, and 22, which depend from claims 1 and 17, the Examiner relies on *Hluchyj* for allegedly disclosing "a high-capacity multistage switching system" (Final Office Action at page 10). Even assuming this

assertion is correct, which Applicant does not concede, *Hluchyj* does not compensate for the deficiencies of *Dewkett* and *Eichelberger* with respect to the independent claims.

Therefore, a *prima facie* case of obviousness has not been established for claims 7-9, 21, and 22 and the Examiner should withdraw the rejection of the claims under 35 U.S.C. § 103(a).

VI. Rejection of claims 14 and 25 under 35 U.S.C. § 103(a) as being unpatentable over *Dewkett*, *Eichelberger*, *Banks*, and *Cannon*

Regarding the rejection of claims 14 and 25, which depend from claims 1 and 17, the Examiner relies on *Cannon* for allegedly disclosing "a Video Camera 106 and an encoder 110 that performs encod[ing] video off-line or live" (Final Office Action at page 11). Even assuming this assertion is correct, which Applicant does not concede, *Cannon* does not compensate for the deficiencies of *Dewkett*, *Eichelberger*, and *Banks* with respect to the independent claims.

Therefore, a *prima facie* case of obviousness has not been established for claims 14 and 25 and the Examiner should withdraw the rejection of the claims under 35 U.S.C. § 103(a).

VII. Rejection of claim 16 under 35 U.S.C. § 103(a) as being unpatentable over *Dewkett*, *Eichelberger*, *Banks*, and *Fukui*

Regarding the rejection of claim 16, which depends from claim 1, the Examiner relies on *Fukui* for allegedly disclosing a "server 6 which provides data in the form of HTML to Information Terminal 1" (Final Office Action at page 12). Even assuming this assertion is correct, which Applicant does not concede, *Fukui* does not compensate for the deficiencies of *Dewkett*, *Eichelberger*, and *Banks* with respect to the independent claims.

Therefore, a *prima facie* case of obviousness has not been established for claims 14 and 25 and the Examiner should withdraw the rejection of the claims under 35 U.S.C. § 103(a).

VIII. Conclusion

Applicant respectfully requests that this Amendment under 37 C.F.R. § 1.116 be entered by the Examiner. This Amendment should allow for immediate action by the Examiner.

Furthermore, Applicant respectfully points out that the Final Office Action by the Examiner presented some new arguments as to the application of the art against Applicant's invention. It is respectfully submitted that the entering of the Amendment would allow the Applicant to reply to the final rejection and place the application in condition for allowance.

Finally, Applicant submits that the entry of the Amendment would place the application in better form for appeal, should the Examiner dispute the patentability of the pending claims.


In view of the foregoing amendments and remarks, Applicant respectfully requests reconsideration of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: September 3, 2009

By: 
Jeffrey A. Berkowitz
Reg. No. 36,743

Philip J. Hoffmann
Registration No. 46,340